



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 04-3599

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: November 17, 2004

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. A public notice of these fee decisions is published in the FCC record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

Corban Communications Inc. – Request for a refund of application processing fees **Denied** (August 11, 2004) [See Implementation of Section 9 Reconsideration, 10 FCC Rcd at 12762]

First Commonwealth Cablevision, Ltd – Request for a reconsideration of a previously issued fee waiver decision concerning waiver of a late charge penalty for FY 2003 regulatory fees **Denied** (August 11, 2004) [See 47 C.F.R. §1.106; McLeodUSA Telecommunications Services, Inc., 19 FCC Rcd 6587, paras. 7-8 (2004)]

Fort Stockton Radio Company, Inc. & Gaines County Broadcasting, LLC – Request for waiver of the late payment penalty KFST-AM, KIKZ and KSEM **Denied** (August 11, 2004) [See 47 C.F.R. §1.1157; see also Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order, 18 FCC Rcd 15, 985 (2003) see also 47 U.S.C. §159 See also Public Notice, Regulatory Fees Due September 24, 2003, DA 03-2557 (July 30, 2003); Public Notice, Federal Communications Commission Extends the Filing Deadline Date of FY 2003 Regulatory Fee, DA 03-2907 (Sept. 22, 2003)]

Green Hills Communications, Inc. – Request for waiver of a late charge penalty for FY 2003 regulatory fees **Denied** (August 11, 2004) [See 47 C.F.R. §1.1157; see also Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order, 18 FCC Rcd 15, 985 (2003) (2003 Report and Order); 47 U.S.C. §159]

Hispanic Keys Broadcasting Corporation – Request for a reconsideration of a previously issued fee decision concerning waiver and deferral of regulatory fees for FY 2003 **Granted** (September 1, 2004) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995)]

Iridium Constellation LLC – Request for refund of application processing fees **Granted** (August 11, 2004) [See *Memorandum Opinion and Order*, Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, FCC 90-63, 5 FCC Rcd 3558, 3574 (1990) see also *Memorandum Opinion And Order*, Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 3 FCC Rcd. 5987 (1988), 1988 WL 489299 (F.C.C.); *Report & Order, Fees*, 2 FCC Rcd. at 949]

Network Access Solutions Corporation – Request for waiver of regulatory fees due for fiscal years 2000, 2001 and 2002 **Denied** (August 11, 2004)

PanAmSat Corporation – Request for an application for review of a decision denying a petition for reconsideration of a request for refund of application processing fees **Granted in part** (September 9, 2004) [See FCC 04-211 Adopted September 1, 2004]

RCN Corporation, Debtor-in –possession – Request for waiver and refund of application processing fees **Granted** (October 7, 2004) [See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 5 FCC Rcd 3558, 3572-73 (1990)]

Standef Broadcasting Corp of ND – Request for waiver of a late payment penalty associated with the FY 2003 regulatory fees **Denied** (August 16, 2004) [See 47 C.F.R. §1.1157; see also Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order, 18 FCC Rcd 15, 985 (2003) (2003 Report and Order); 47 U.S.C. §159]

Tele-Media Corporation of Delaware – Request for waiver of a late payment penalty associated with the FY 2003 regulatory fees **Denied** (September 1, 2004) [See 47 C.F.R. §1.1157; see also Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order, 18 FCC Rcd 15, 985 (2003) (2003 Report and Order); 47 U.S.C. §159]

Televue Systems of MN, Inc. – Request for waiver of a late payment penalty associated with the FY 2003 regulatory fees **Denied** (August 16, 2004) [See 47 C.F.R. §1.1157; see also Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order, 18 FCC Rcd 15, 985 (2003) (2003 Report and Order); 47 U.S.C. §159; See also Public Notice, Regulatory Fees Due September 24, 2003, DA 03-2557 (July 30, 2003); Public Notice, Federal Communications Commission Extends the Filing Deadline Date of FY 2003 Regulatory Fee, DA 03-2907 (Sept. 22, 2003)]

Ubik Corporation – Request for waiver and refund of the regulatory fee due for KNIK-FM Anchorage, AK fiscal year 2003 **Denied** (August 11, 2004) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995)]

NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE REVENUE AND RECEIVABLES OPERATIONS GROUP AT (202) 418-1995.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 11 2004

FILE

OFFICE OF
MANAGING DIRECTOR

Rodney L. Joyce, Esq.
Shook, Hardy & Bacon, LLP
Hamilton Square
600 14th Street, N.W., Suite 800
Washington, D.C. 20005-2004

Re: Request for Refund of Application Fees
Corban Communications, Inc.
Fee Control No. 0305138994870001

Dear Mr. Joyce:

This is in response to your request (dated December 1, 2003) that the Office of Managing Director reconsider its decision denying your request for refund of the common carrier microwave license application fees filed on behalf of Corban Communications, Inc. (Corban).¹ Specifically, as you stated in the underlying request for relief, you seek a refund of the application fees associated with reapplying for 45 licenses that the Commission "cancelled late last year at Corban's request" and modifying "eight other licenses by restoring receive sites that the FCC . . . deleted late last year at Corban's request." Our records reflect that you paid the \$16,160.00 application fees at issue here (i.e., 45 license applications multiplied by \$320.00 (\$14,400.00), plus eight modification applications multiplied by \$220.00 (\$1,760.00)).

In the *Letter Decision*, we initially pointed out that the Commission construes its waiver authority narrowly and will grant waivers only in "extraordinary and compelling circumstances."² Secondly, we informed Corban that its waiver request was not supported by a "compelling case of financial hardship." Specifically, we found that the "Cash Flow Statement for the Period from April 1, 2003 to June 30, 2003" that Corban submitted in connection with its request for relief (First Financial Statement) did not provide sufficient grounds for a waiver of the application fees. Citing *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *on recon.*, 10 FCC Rcd 12759, 12761-62 (1995) (*Implementation of Section 9 Reconsideration*), we explained that in determining whether a licensee has sufficient revenues to pay its fees,

¹ See Letter from Mark A. Reger, Chief Financial Officer (CFO), Office of Managing Director (OMD), FCC, to Rodney L. Joyce, Esq. (dated Oct. 30, 2003) (*Letter Decision*).

² See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 958, para. 70 (1987); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003).

the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. We further explained that although deductions for amortization and depreciation, which do not affect cash flow, and payments to principals reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the fee.³

On October 30, 2003, after receiving a copy of the *Letter Decision*, you contacted Commission staff and expressed disagreement with the conclusion in the *Letter Decision* that Corban's waiver request was not supported by a compelling case of financial hardship. In an e-mail communication dated November 3, 2003, Commission staff responded that to the extent Corban disagreed with that conclusion, Corban was invited to supplement the record "with a financial (profit and loss) statement for the relevant period that more clearly identifies its income and expenses for the period and more clearly establishes that Corban lacked sufficient funds to pay the fees at issue here." Citing *Implementation of Section 9 Reconsideration*, 10 FCC Rcd at 12762, Commission staff reminded you that, in providing such supplemental evidence, Corban bore "the burden of establishing that payment of the fees would cause Corban sufficient financial hardship warranting a waiver of our rules."

Thereafter, Corban submitted the instant request for reconsideration supported by another cash flow statement (Second Financial Statement) for the same three-month period (i.e., April 1, 2003 through June 30, 2003) as was reflected in the First Financial Statement. In an e-mail communication to you on December 9, 2003, Commission staff advised further supplementation. Specifically, Commission staff quoted from the *Implementation of Section 9 Reconsideration* that regulatees can establish financial hardship by submitting:

information such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. *Implementation of Section 9 Reconsideration*, 10 FCC Rcd at 12762.

Commission staff invited you to "supplement the record further with a financial (profit and loss) statement for the twelve-month period that more clearly identifies Corban's income and expenses for the period and clearly establishes that Corban lacked sufficient funds to pay the fees at issue here." Corban did not further supplement the record.

We find that Corban's Second Financial Statement does not support Corban's request for a refund of the application filing fees. By providing a cash flow statement of only three months, Corban's Second Financial Statement does not clearly identify Corban's income and expenses for purposes of determining Corban's financial position. The record before

³ In the *Letter Decision*, we found that the additional arguments that you raised in support of your request for relief also did not warrant a waiver of the application fees. You do not reassert those other arguments here.

us provides an insufficient basis for determining whether Corban lacks sufficient funds to pay the application fees and to maintain its service to the public so as to justify a waiver of the application fees.⁴ Moreover, Corban's Second Financial Statement appears to be inconsistent with the First Financial Statement in that the former reflects no expenses for depreciation or amortization for the three-month time period, while the latter (which documents the same three-month period) does reflect such expenses.⁵ Although you state that "Corban made no cash payments to principals during that period," we are unable to determine whether payments were made to principals over a more extended period. Further, the letter decisions upon which you rely which grant requests for fee relief based upon financial hardship do not support your request because those decisions are based upon financial statements for twelve-month time periods.⁶ Accordingly, in view of the Commission's stringent standards for granting fee waivers, and in the absence of sufficient documentation to support your request for relief on the basis of financial hardship, we find that you have failed to establish a compelling case for relief and deny your request for a waiver of the \$16,160.00 application fees.

You have also requested confidential treatment of the material that you submitted with your request for fee relief. Pursuant to section 0.459(d)(1) of the Commission's rules, 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your application fees is received, you will be notified and afforded the opportunity to respond at that time.

⁴ See *Implementation of Section 9 Reconsideration*, 10 FCC Rcd at 12762.

⁵ In this regard, we also note that a "Consolidated Statement of Cash Flows for the Six Months Ended December 31, 2002," submitted in connection with the initial request for refund, reflects substantial depreciation and amortization expenses.

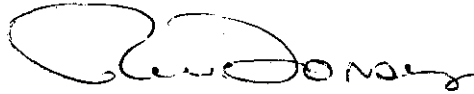
⁶ See Letter from Mark A. Reger, CFO, OMD, FCC, to Maurice Cohen (dated July 14, 2003) (granting a request for a waiver of the FY 2002 regulatory fee for Northeast Radio, Inc. (NRI) because NRI's Statement of Operations and Accumulated Deficit for 2000 and 2001 shows a net operating loss); Letter from Mark A. Reger, CFO, OMD, FCC, to William Roberts (dated Mar. 27, 2003) (granting a request for a waiver of the FY 2002 regulatory fee for WHAN-AM because WHAN-AM's 2001 Internal Revenue Service Form 1065 ("U.S. Return of Partnership Income") reflects that the station suffered a financial loss for 2001); Letter from Mark A. Reger, CFO, OMD, FCC, to Gerald A. DeCicio (dated Jan. 31, 2003) (granting a request for a waiver of FY 2001 regulatory fee for GTC Telecom (GTC) because GTC's consolidated balance sheet, consolidated statement of operations, consolidated statement of cash flow and summary compensation table for the year ending June 30, 2001, reflect that the station suffered a financial loss for FY 2001); Letter from Mark A. Reger, CFO, OMD, FCC, to Aaron P. Shainis, Esq. (dated Apr. 26, 2002) (granting a request for a waiver of the FY 2000 regulatory fee for Hispanic Keys Broadcasting Corp. (Hispanic) because its 2000 U.S. Income Tax Return for an S Corporation indicates that Hispanic suffered a financial loss in 2000).

Rodney L. Joyce, Esq.

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If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark A. Reger". The signature is fluid and cursive, with a large initial "M" and "R".

Mark A. Reger
Chief Financial Officer